

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:BRK:TL-N-8066-98
HNAdams

date: April 12, 2000

to: District Director, Brooklyn
Chief, Examination Division
Attn: [REDACTED], Chief, [REDACTED]

from: District Counsel, Brooklyn

subject: [REDACTED]

U.I.L. No. 6501.08-17

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Reference is made to your April 6, 2000 request for advice regarding the above taxpayer.

ISSUE

What language should be used on a consent to extend the statutory period for assessment of tax attributable to deductions claimed by [REDACTED] to restrict the consent to the deficiencies attributable to adjustments to the amounts it reported as deductible settlement payments to the [REDACTED] and the [REDACTED]?

CONCLUSION

The following language may be used to restrict the consent to the tax attributable to deductions claimed by [REDACTED] for settlement payments to the [REDACTED] and the [REDACTED]:

The amount(s) of any assessments with respect to all shareholders is to be limited to the amount(s) resulting from any adjustment to the following amounts included for the above named S corporation in the amounts it reported as other deductions, environmental cost:

	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

DISCUSSION

[REDACTED] is an S corporation that was subject to Subchapter D of the Code (Code sections 6241 through 6245) for the years currently under examination, which include the [REDACTED] years ended December 31, [REDACTED], [REDACTED], [REDACTED] and [REDACTED].¹ We understand that you have reached a tentative agreement with [REDACTED] to resolve all of the items raised as a result of the examination except for the deductibility of the following settlement payments to the [REDACTED] and the [REDACTED] during [REDACTED], [REDACTED], and [REDACTED]:

	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED] included the settlement payments in the amounts it reported as other deductions, - environmental cost. We further understand that you expect to obtain partial agreements from each of the corporation's shareholders with respect to the items for which a tentative agreement has been reached and to assess the deficiencies resulting from that partial agreement before the expiration of the statute of limitations as extended.

¹ Although section 1307 of the Small Business Job Protection Act of 1996 repealed the provisions of Subchapter D that provided for the corporate level determination of the tax treatment of S corporation items, the repeal was effective only for tax years beginning after December 31, [REDACTED].

As a result, the only issue for which a statute extension will be necessary will be the deductibility of the above settlement payments. Finally, we understand that [REDACTED] has requested, and that the examination Division is willing to grant, a consent restricted to the issue of the deductibility of the settlement payments.²

Guidance on drafting restrictive consents is contained in IRM section 4541.72. Section 4541.72(1) specifies that the basic statement used to restrict a consent is as follows:

The amount of any deficiency assessment is to be limited to that resulting from any adjustment to (description of the area(s) of consideration) including any consequential changes to other items based on such adjustment.

It cautions that the restrictive language should describe the area or areas of consideration rather than the proposed tax treatment and that Code sections should not be included in restrictive language.

Based on the foregoing, we recommend the use of the following restrictive language which we have adapted from the basic statement quoted above to apply to an S corporation such as [REDACTED] and tailored to the facts set forth herein:

The amount(s) of any assessments with respect to all shareholders is to be limited to the amount(s) resulting from any adjustment to the following amounts included for the above named S corporation in the amounts it reported as other deductions, environmental cost:

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

² Internal Revenue Manual sections 4541.71 and 8233.(12) describe the circumstances in which restricted consents are appropriate. We are not opining on whether a restricted consent is appropriate as we understand that you have considered the matter and concluded that a restricted consent is appropriate.

This opinion is based on the facts set forth herein. It might change if the facts are determined to be incorrect or if additional facts are developed. If the facts are determined to be incorrect or if additional facts are developed, this opinion should not be relied upon. You should be aware that, under routine procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

If you have any questions, you should call Halvor Adams at (516) 688-1737.

JODY TANCER
Acting District Counsel